

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 16

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

Ex parte ANDREA M. SCHNEITER,  
JOHN L. SCHNEITER, and  
MARK B. GAULIN

MAILED

JUL 16 2002

Appeal No. 2002-1215  
Application No. 09/286,043

PAT. & T.M. OFFICE  
BOARD OF PATENT APPEALS  
AND INTERFERENCES

DOCKETED 12/16/02

ORDER REMANDING TO THE EXAMINER

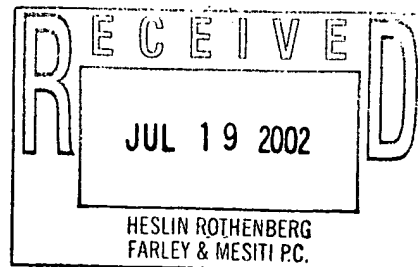
Before STONER, Chief Administrative Patent Judge, HARKCOM, Vice Chief Administrative Patent Judge, and WILLIAM F. SMITH, Administrative Patent Judge.

***Per Curiam.***

The Office of the Deputy Commissioner for Patent Examination Policy has requested that this application be remanded to the jurisdiction of the patent examiner so that issues raised in this appeal can be reconsidered. Accordingly, we **remand**.

***A. Findings of Fact.***

An Examiner's Answer was mailed on September 6, 2001 (Paper No. 12). Appellants filed a Reply Brief on January 23, 2002 (Paper No. 13). On April 3, 2002, the examiner responded by entering a Supplemental Examiner's Answer (Paper



No. 14). Appellants then filed a communication on May 9, 2002, entitled "REQUEST FOR EXPUNGEMENT" (Paper No. 15).

On December 1, 1997, the rule pertaining to the Examiner's Answer and Reply Brief, 37 CFR § 1.193, was amended to read as follows:

(b)(1) Appellant may file a reply brief to an examiner's answer within two months from the date of such examiner's answer . . . . The primary examiner must either acknowledge receipt and entry of the reply brief or withdraw the final rejection and reopen prosecution to respond to the reply brief. A supplemental examiner's answer is not permitted, unless the application has been remanded by the Board of Patent Appeals and Interferences for such purpose.

(2) Where prosecution is reopened by the primary examiner after an appeal or reply brief has been filed, appellant must exercise one of the following two options to avoid abandonment of the application:

(i) File a reply under § 1.111, if the Office action is not final, or a reply under § 1.113, if the Office action is final; or

(ii) Request reinstatement of the appeal. If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (§§ 1.130, 1.131 or 1.132) or other evidence are permitted.

#### **B. Conclusion**


In view of the changes to 37 CFR § 1.193, the entry of the Supplemental Examiner's Answer mailed April 3, 2002 (Paper No. 14), is inappropriate.

Apprised of these problems, the Office of the Deputy Commissioner of Patent Examination Policy has requested this remand.

The Board **must** be informed promptly of any action affecting the appeal in this case, including reopening prosecution, allowance and/or abandonment of the application.

**REMAND**

  
BRUCE H. STONER, JR., Chief )  
Administrative Patent Judge )

  
GARY V. HARKCOM, Vice Chief ) BOARD OF PATENT  
Administrative Patent Judge ) APPEALS AND  
INTERFERENCES )

  
WILLIAM F. SMITH )  
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